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SUBJECT: WHY IS THIS FTA TAKING SO LONG?

REF: BANGKOK 000492

Classified By: Economic Counselor Michael J. Delaney: E.O. 12958. Reason: 1.4(b) and (d)

11. (C) Summary: Our answer to the question of why this FTA is taking so long is four lacks: lack of adequate preparation in Thailand for the FTA talks; lack of experience among Thai negotiators in negotiating a comprehensive FTA with a major trading partner; lack of strong and effective leadership for the Thai FTA negotiating team; and lack of enthusiasm within the Royal Thai Government, and Thai society in general, for the FTA. Thailand entered these talks with an almost total lack of preparation, and has fielded an FTA team inexperienced in negotiating anything remotely like the comprehensive trade and investment deal we are seeking. The appointed chief of the Thai team proved incapable of exerting control over the disparate RTG elements involved in the talks, many of which are less than enthusiastic about the FTA with the US. Also, the FTA has always been closely associated with PM Thaksin, and the decline in the PM's political fortunes has adversely affected the fortunes of the FTA.

12. (C) As to the question of whether the FTA can be successfully completed within the time remaining, our firm belief is -- maybe. It is said that Thais are terrible at planning but very good at coping: having botched the planning for the FTA, the RTG may yet be able to scramble, adapt its approach, and bring the FTA to a successful conclusion. We are convinced that the key ministries (Commerce and Finance) are finally determined to do so, and recently have instituted changes that promise better preparation, more effective leadership, and more productive negotiating sessions. The RTG has also now pledged to consult with Parliament, and step up its outreach program to win over the Thai public. The question is whether there exists sufficient time remaining to do what has to be done both inside the room, i.e., with the FTA negotiations themselves, and outside the room, i.e., with public opinion in Thailand.

13. (C) For our part, we need to do one thing: we must come up with an effective response to the medicines pricing question -- particularly for HIV/AIDS medicines -- and make sure our message is heard. Due to its historical and emotional content in Thailand, this issue is white hot for any Thai government, and is the one issue that has the power to kill the FTA. In partnership with local Pharma representatives, the Embassy has prepared and is forwarding for Washington agencies' clearance a fact sheet on the treatment of medicines in the FTA which, we believe, will serve to allay much of the concern on this issue. End Summary.

#### The Four Lacks

14. (C) The sixth round of negotiations for the US-Thailand Free Trade Agreement (FTA), held January 9-13, 2006 in Chiang Mai, Thailand, presents a mixed picture. While important progress was achieved in some of the FTA negotiating areas, other areas showed only modest forward movement. Post-Chiang Mai, after 20 months of negotiations, completion of the FTA text still seems far off, probably beyond the publicly stated US deadline of end-April 2006. Many knowledgeable Thai observers of the FTA process question whether the FTA will be completed by the US deadline.

15. (C) Many of the questions over the FTA's completion date derive from what has been accomplished so far. There are many ways to measure an FTA negotiation's progress, but one of the simplest is to measure what percentage of the FTA text has been completed so far. Using that measure, it appears that only a small percentage of the text has been completed. Moreover, many of the key issues regarding coverage and other obligations remain to be decided.

16. (C) So why is this FTA taking so long? That so much effort has been expended for such modest progress is attributable to several factors, most importantly the four "lacks": lack of adequate preparation in Thailand for the FTA talks; lack of experience among Thai negotiators in negotiating a comprehensive FTA with a major trading partner; lack of strong and effective leadership for the Thai FTA

negotiating team; and lack of enthusiasm within the Royal Thai Government, and Thai society in general, for the FTA.

#### Lack of Adequate Preparation.

17. (C) It has become obvious that the decision by Prime Minister Thaksin to propose to the US an FTA was made on the basis of consultations with a few key advisers, and no one else. Thus, FTA negotiations with the US were launched with very little preparation by the many Thai Government ministries and agencies that would be involved. Similarly, there was very little attempt to educate the Thai public on the rationale for the FTA and its potential economic benefits.

18. (C) The effect of the lack of any effort by Thaksin to explain the rationale for the FTA can be seen in the conduct of many Royal Thai Government FTA negotiators. Faced with little idea of what Thailand could expect in terms of rights and obligations under the FTA, many Thai FTA negotiators have utilized the first 19 months of the FTA negotiations to serve as a sort of feasibility study for the FTA. While the FTA rounds have served to answer many questions and clarify what the FTA might look like, they (particularly regarding market access) have not been true negotiations for many of the Thai officials and ministries involved -- the rounds have been conversations about negotiations, which ideally will lead to negotiations per se.

19. (C) Thaksin's approach with the FTA is consistent with the PM's much-touted "CEO" style, characterized above all by strong, decisive leadership. From its inception, the FTA with the US has been seen as Thaksin's project. While in some ways the PM's personal imprimatur may be one of the FTA's strengths, it has become obvious that it is also its great weakness. For one thing, the identification of the FTA with Thaksin means that the FTA's fortunes are more or less directly linked with those of the PM's. Over the past year, Thaksin's popularity has been buffeted by allegations of corruption, conflicts of interest, and autocratic rule that largely bypasses democratic institutions like the Parliament. While Thaksin remains firmly in charge (in part because of the absence of a credible alternative), his popularity has suffered, particularly among the politically active Bangkok middle class. One of the basic complaints about Thaksin is that he does not consult with anyone. Unfortunately, the FTA is now being touted as the example par excellence of this tendency of the PM's. As the popularity of the PM has declined, so has the FTA's. At the height of his popularity, Thaksin may have been able to secure support for the FTA solely on the basis of his personal endorsement, but those days are over. Politically active elements of Thai society are growing skeptical and demanding greater information. The Thai Government's response has been belated and inadequate. In negotiating the FTA, the US is seen by some as abetting Thaksin's autocratic tendencies.

10. (C) A frequent criticism of the Thaksin administration has been that many of its policies are promulgated primarily for the benefit of the Prime Minister, his family and his business allies. The most recent example critics point to is the sale of the Thaksin family's 49.60 percent share of Shin Corp, the family's publicly-listed holding company, to Singapore's Temasek. The sale occurred on the same day as Thai law permitted foreign companies to increase their equity in Thai telecom firms to 49 percent. Shin Corp's principal asset is a mobile phone company. Critics of the FTA will surely use this as "proof" that an FTA with the US, with the many changes in Thai law it will bring about, is primarily a tool for Thaksin to change policies in order to gain financial benefit.

11. (C) The sale of the Shin Corp shares was structured in a particularly circuitous, non-transparent, and possibly illegal manner in order to avoid any tax liability. At a time when the RTG budget is under some pressure to fund major infrastructure projects and the tax authorities have grown more vigorous in their tax collection efforts, the avoidance of any tax liability on one of the largest transactions in Thai history (73 billion baht- US\$1.8 billion) is clearly striking the Thai man-on-the-street as special treatment for the PM. In addition, the Thai SEC made several rulings regarding the need (or not) for Temasek to tender for the shares of minority stockholders that clearly favored the interests of Temasek and the PM's family. The perception that Thaksin utilizes the state apparatus to enrich himself, while not universal, is fairly prominent within the Bangkok middle class, some of whom see the same dynamic at work with the FTA. While we see ourselves as negotiating an FTA with Thailand, a (probably growing) number of vocal Thais see the U.S. as negotiating an FTA with Thaksin.

#### Lack of Experience.

12. (C) While Thailand has negotiated a number of bilateral FTAs with selected trading partners (including Australia, New

Zealand, China, and Japan), these have been far less comprehensive than the FTA the US is proposing. The Thai approach in previous FTAs has been to concentrate on sectors of greatest immediate interest and put aside whole sectors deemed "too hard." GATT Article XXIV consistency has been taken care of by the fig leaf of labeling these deals "early harvest" agreements.

13. (C) Thailand has never attempted to negotiate anything remotely like the FTA with the US. With its comprehensive coverage of trade and investment, the FTA is taking on protected and sensitive sectors such as financial services and government procurement. Coverage of labor and the environment are entirely new for Thailand, as is the consideration of going beyond WTO obligations in the protection of intellectual property. Besides scope, the TPA-imposed time constraints of the US side are also new for Thailand: lack of Thai experience in negotiating such a comprehensive agreement could be compensated for with additional time for consideration, but the looming expiration of TPA and demands on US trade negotiations resources makes time a precious commodity. All this means that negotiating the FTA is very hard for Thailand, much harder than such negotiations are for the US.

#### Lack of Leadership.

14. (C) PM Thaksin's management style has resulted in a concentration of decision-making and power at the top. We have found that to get action on something important, it is necessary to go to the PM or his top advisers (who number no more than four or five) -- even Ministers lack real authority on many issues that seemingly fall within their responsibility. Long time MFA officer and former Ambassador to the US Nitya Phibulsonggram was appointed in 2004 to lead the Thai FTA negotiating team. With no prior experience in trade negotiations, Nitya struggled to provide effective leadership. Expertise aside, Nitya is not a member of Thaksin's inner circle. This left him without the authority to make the many decisions necessary to move the negotiations forward. The full implications of this were felt in Chiang Mai as -- once again -- several Thai negotiating groups arrived without offers or authority to move on the FTA text. Immediately after the Chiang Mai meetings, Nitya submitted his resignation. Privately, Nitya has told us that he resigned owing to his inability to exert authority on FTA matters over the various ministries involved, as well as his inability to recruit the assistance of the Prime Minister in his efforts to exert authority over those ministries. We also believe that the incessant personal attacks by anti-FTA forces against Nitya played a role in his resignation.

15. (C) The search is well underway for a new FTA chief. Most of the names floated have been subordinates or long time associates of Deputy Prime Minister/Commerce Minister Somkid Jatusriputak. Since Somkid has the PM's ear, the appointment of a person trusted by Somkid would facilitate communication with the PM and, we hope, make for faster, more productive negotiations. It remains to be seen, however, whether a Somkid-led FTA team would in fact move any faster than the one led by Nitya. In 2004, Somkid told several of our RTG contacts that he believed an FTA with the US would be too difficult for Thailand. Some here think that Somkid would like to find a painless way to shelve the FTA. Somkid is loyal to the PM, however, and we think he will do what the PM asks, i.e., push the FTA process forward to the best of his abilities.

16. (C) Somkid took direct charge of Thailand's FTA talks with Japan in their final stages. His version of events has Thailand taking a hard line against Japanese demands and prevailing in the end. He has repeatedly complained to us and others that Nitya was too much of a diplomat and not enough of a trade negotiator -- he hadn't made the transition from being Thailand's Ambassador to the US and this makes him much too nice to the Americans. He cites as a model negotiator Thailand's lead in the FTA with Japan, MFA Deputy PermSec Pisarn Manavapat, who by all accounts had poor personal relations with the Japanese side but was steadfast in defending the Thai position. We think Somkid's belief in the efficacy of the hard line is behind his recent decision to overrule the Foreign Ministry and reject the proposed exchange of letters that would have ensured the continuation of reciprocal rights granted by the US-Thailand Treaty of Amity and Economic Relations. (NOTE: The RTG has subsequently proposed an interim solution to this problem -- reftel.)

#### Lack of Enthusiasm.

17. (C) "Nobody likes it, and nobody likes you." That is how Ambassador Nitya, after resigning his position, characterized to us rank-and-file Royal Thai Government officials' attitudes toward the FTA (and, we guess, the US FTA negotiating team and positions). The fact that many of the RTG officials involved in the FTA process are less than

enthusiastic about the project has, we believe, played a role in the course of the talks. Even key economic ministers have, until very recently, shied away from publicly voicing support for the FTA. Like many developing countries, Thailand is characterized by weak institutions. The Royal Thai Government apparatus falls short of the developed world norm of a fairly honest, professional, and apolitical organization that serves at the beck and call of the PM and his delegates. Semi-independent fiefdoms abound, with varying degrees of responsiveness to the PM's perceived wishes. This can be seen in ministries' behavior in the FTA talks. While a few display something akin to outright defiance (the Governor of the non-independent Bank of Thailand, for example), most others have displayed a certain passivity, or "work to rule" attitude (perhaps betraying their understanding of USG time constraints). It is this attitude, we believe, that accounts for most of the RTG's slowness in tabling offers and responding to the US side.

18. (C) Sometimes the fear of new burdens is behind RTG officials' opposition. For example, implementation of the US-proposed IPR provisions would require not only instituting legal changes (a daunting, time consuming task in Thailand), but developing new systems for registering and recording IP, and training officials in new enforcement methods. In Chiang Mai, RTG negotiators expressed their confusion over both how to set up a system to register a sound or scent mark, and also how to train customs officials to recognize these marks accurately and determine if infringement had occurred. At the same time, some FTA provisions designed to streamline IP registration procedures could cut into RTG revenues, decreasing resources available to the RTG to implement the FTA.

19. (C) The lack of enthusiasm for the FTA that is evident among RTG officials is also manifest in larger Thai society. The absence of any public outreach program, coupled with Thaksin's declining popularity, has left an open field for the anti-FTA forces to operate. Opposition to the FTA built throughout most of 2005, culminating in the demonstrations in Chiang Mai. The demonstrations attacked the FTA, and attacked the US. Since the FTA is closely identified with Thaksin, many "anti-FTA" voices (particularly those in the opposition political parties) are not so much anti-FTA so much as anti-Thaksin (with the US seen as a collaborator). But many special interest groups have come out in opposition to the FTA per se, on the grounds that market opening would harm local producers. They cite Thailand's experience with its FTA with China and the loss of competitiveness of Thai onions and garlic in the face of Chinese imports. (Note: This is a highly selective interpretation of the China FTA's effects: post-FTA, Thailand enjoys a growing agricultural trade surplus with China.) Local services providers and their allies fret about US firms taking over the economy ("you're so big and we're so small"). The head of the Bank of Thailand complains that US banks only want to service the city of Bangkok, while the real need is providing credit for the rural population. And there is a pervasive belief that too-rapid liberalization was a key factor in the 1997-98 Thai financial crisis.

20. (C) In the absence of an effective RTG campaign to counter these FTA arguments, public opinion will remain opposed to the FTA. Even if the FTA text could somehow be completed in spite of public skepticism, the likely requirement for numerous changes in Thai law means that the battle would subsequently shift to the Parliament. It is doubtful whether, under current circumstances, implementing legislation for the FTA would be approved by the Parliament.

#### HIV/AIDS Medicines Prices Could Derail the FTA

21. (C) The vast majority of the anti-FTA arguments amount to the usual protectionist arguments and can be effectively countered. There is one opposition voice, however, that poses a far greater challenge to the FTA: Thailand's HIV/AIDS sufferers. Citing the IP provisions proposed by the US, HIV/AIDS groups and their supporters oppose the FTA on the grounds that it will raise the price of current and/or next generation HIV/AIDS medicines in Thailand, effectively denying access to these medicines. That is an explosive claim in Thailand, one that is guaranteed to spark street protests. The majority of the demonstrators in Chiang Mai were HIV/AIDS patients.

22. (C) The campaign against HIV/AIDS is a potent social force in Thailand. Thailand's HIV/AIDS epidemic began in the 1980s, in the very early stages of international public awareness of this disease. HIV/AIDS was first detected among injecting drug users. From 1987, to 1988, to 1989 the number of injecting drug users testing positive for HIV jumped from one percent, to 30 percent, to more than 60 percent. The virus was soon detected among other population groups, including female commercial sex workers, their partners, and families. By 1992, more than one third of commercial sex



workers in Bangkok and Chiang Mai were infected. The Thai Government launched a program for controlling HIV transmission in 1989 with two major aims -- harm reduction associated with the use of injection drugs and a 100 percent condom usage campaign to address the problem of heterosexual transmission. The program was successful: after peaking at around 143,000 new cases in 1991, the number of new HIV infections in Thailand declined to an estimated 19,000 in 2003. UNAIDS and the World Health Organization have called Thailand the only HIV/AIDS "success story" in Asia, with a reduced current HIV prevalence of about 1.5 percent.

23. (C) What the statistics don't tell, and what can only be evinced by people who lived in Thailand in the late 1980s and early 1990s, is the sense of fear and panic that accompanied the outburst of HIV infections in those years. AIDS was a relatively new and poorly understood disease then, and because at that time no effective drug regimen yet existed, diagnosis was a death sentence. The Thai Government's HIV control program has been successful precisely because the Thai people were so terrified of HIV that they changed their behavior as a consequence. The development of effective anti-retroviral medications was greeted by the Thais as nothing short of a miracle. The word spread -- people with HIV could survive! The government began providing these drugs free of charge to thousands of the poorest HIV patients and ensured that prices for locally-produced medications were kept low for those who could not otherwise afford to pay for them. Thus, at the present time, there is a generalized, very emotional feeling among Thais that they have faced and overcome a horrible danger. And this explains the visceral reaction they have to anything that might be perceived as a movement backward from their success -- it renews their fear.

24. (C) The Thai Government's very popular "30 Baht" health care scheme (which provides medical care for low-income Thais for a fee of about US75 cents per visit to the doctor) in combination with the RTG goal of providing drug treatment to 80,000 HIV patients has helped significantly reduce the annual HIV mortality rate, by some accounts by as much as 79 percent. The RTG hopes to increase the goal to 150,000 patients by 2008. The generic medicines used in the program, produced by the Government Pharmaceutical Organization, are off-patent drugs developed by foreign firms which cost about USD1 dollar per day per patient. Due to the drug resistance that patients eventually face, second-line drug treatment becomes necessary, requiring drugs costing three to ten times as much. The US request in the FTA negotiations for enhanced IP and data exclusivity protections triggers the emotional (and effective) argument voiced by the demonstrators: the FTA will make life-saving drugs unaffordable, bankrupt the 30 baht health care scheme, and kill Thai HIV patients.

25. (C) The role played by the HIV/AIDS issue in the Thai public's perception of the FTA cannot be overstated. To illustrate, we believe that if the FTA formally excluded all HIV/AIDS medicines from its provisions, better than 90 percent of the anti-FTA demonstrators, and much of the anti-FTA public commentary in Thailand, would disappear.

26. (C) We believe that effectively addressing this issue is essential if we are to complete successfully the FTA. Much of what is being said in Thailand on this subject misrepresents the US position, and our highest priority is correcting this. In partnership with local Pharma representatives, the Embassy has prepared a "Fact Sheet," complete with Qs and As, on the treatment of medicines in the FTA which we hope to use in our public outreach efforts with the media and interest groups. We believe the information in this document, which is being forwarded to Washington agencies for review and clearance, will serve to allay much of the concern on this issue.

#### Constitutional Challenge to the FTA

27. (C) FTA opponents are also fighting the FTA on the legal front. Citing constitutional grounds, the Senate Standing Committee on Foreign Affairs (chaired by Thaksin opponent Senator Kraisaak Choonhavan) has challenged the legality of the US and other FTAs. His lawsuit argues that paragraph 2 of Article 224 of the Constitution of the Kingdom of Thailand requires parliamentary approval of any change to "the boundary of state jurisdiction." The lawsuit cites several provisions of the Thailand-Australia FTA (TAFTA) as changing "the boundary of state jurisdiction." Since the RTG had not submitted TAFTA for parliamentary approval, the treaty is unconstitutional and should be annulled. The suit is currently before the State Ombudsman, who will decide whether to send the lawsuit to a court. Most observers here think the Ombudsman will decide to forward the case to the Constitutional Court, which will rule on the issue. The Constitutional Court has not shown an inclination to challenge the Thaksin government, and even if it ruled in favor of Kraisaak's committee, the TAFTA's implementation regulations (such as lowered tariffs) would remain in place.

Nevertheless, if the Constitutional Court rules in the plaintiffs' favor, this will affect the FTA with the US as well, since the RTG has stated it does not plan to submit the FTA to the Parliament for approval. We doubt there currently exists sufficient support in the Parliament (particularly the Senate) for approval of the FTA.

Can We Complete This FTA?

128. (C) So, given the four lacks that have delayed progress on the FTA, can we complete it within the time remaining? Our firm belief is -- maybe. Success will require 1) a different approach by the RTG, and 2) some additional work on our part.

129. (C) On the first requirement, some grounds for hope have emerged recently. It is said that Thais are terrible at planning, but excellent at coping and adapting. Many a westerner has been appalled at the chaos attending the preparation of an event in Thailand, and then amazed when things come together very well at the last minute. We may see a similar phenomenon with the FTA. Events in Chiang Mai, the resignation of the chief Thai FTA negotiator, and rumblings of discontent from the US side have served as a wake-up call to the RTG. Senior RTG ministers are now speaking publicly in support of the FTA, and warning that Thailand will suffer if the FTA is not completed.

130. (C) On education, DPM/Commerce Minister Somkid has committed to briefing the Parliament on the FTA negotiations on a regular basis -- a major shift in the RTG's position. The RTG will soon appoint a new person to lead the Thai FTA team. All of the candidates we have heard about would, we believe, be able to provide effective leadership. We believe that key ministers (Commerce and Finance) are committed to reining in RTG elements that are not supporting the FTA process. In a recent meeting with several hundred employees, Finance Minister Thanong told those gathered that the Prime Minister wants the FTA and those within the government who are opposing it must get with the program. We have received strong assurances from the Vice Minister of Commerce that his boss, Somkid, is now in charge, and that things will be different in future negotiating rounds. Their message to us is, "This is under new management."

131. (C) We doubt whether extending the deadline by a month or two for completion of the FTA will significantly alter the situation here. For one thing, there is widespread skepticism that the US is serious about the end-of-April deadline, so an extension would serve to validate that skepticism and would not necessarily lead to increasing the tempo of negotiations.

We Must Effectively Address the HIV/AIDS Medicines issue

132. (C) We need to do one thing: we believe we must come up with an effective response to the medicines pricing question -- particularly for HIV/AIDS medicines -- and make sure our message is heard. Due to its historical and emotional content in Thailand (paras 21-26), this issue is a hot button for any Thai government. If the Thai public is left with the impression that the FTA will contribute to an increase in the price of HIV/AIDS medicines in Thailand, the RTG will find itself painted into a corner and will lack the support it needs to conclude the FTA. We believe this is the one issue that has the power to kill the FTA. While the Embassy and USTR officials have addressed this issue on many occasions in Thailand, a less equivocal and simpler message on key questions is urgently needed. The good news is that, if we can effectively address this issue, we see no other absolute "show-stoppers" to the eventual acceptance of the FTA by most of Thai society. Our proposed strategy is for an aggressive public outreach program concerning the FTA and drugs (especially HIV/AIDS drugs) pricing, featuring our proposed Fact Sheet and accompanying Qs and as its centerpiece.

133. (C) Recalling the observation that Thais are terrible at planning but very good at coping, having botched the planning for the FTA, the RTG may yet be able to scramble, adapt its approach, and bring the FTA to a successful conclusion. We are convinced that the key ministries (Commerce and Finance) are determined to do so. The question is whether there exists sufficient time remaining to do what has to be done both inside the room, i.e., with the FTA negotiations themselves, and outside the room, i.e., with public opinion in Thailand, especially if the PM remains on the political defensive.

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